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FISCAL IMPACT STATEMENT

LS 6221

BILL NUMBER: SB 180

NOTE PREPARED: Dec 6, 2014

BILL AMENDED:

SUBJECT: Bias-Motivated Offenses.

FIRST AUTHOR: Sen. Taylor

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Change in Definition* – It provides that a bias-motivated crime is an offense in which the person who committed the offense intentionally: (1) selected the person who was injured; or (2) damaged or otherwise affected property; by the offense because of the actual or perceived color, creed, disability, national origin, race, religion, sexual orientation, gender, or gender identity of the injured person or of the owner or occupant of the affected property.
- B. *Penalty Enhancement* – It enhances the penalties for the following offenses one level if the offense is a bias-motivated crime: (1) Battery. (2) Aggravated battery. (3) Strangulation. (4) Kidnapping. (5) Criminal confinement. (6) Robbery. (7) Arson. (8) Criminal mischief. (9) Burglary. (10) Residential entry. (11) Criminal trespass. (12) Theft. (13) Criminal conversion. (14) Intimidation. (15) Harassment. (16) Stalking.
- C. *Training in Bias-Motivated Crimes* – It requires law enforcement officers to receive training in identifying, responding to, and reporting bias-motivated crimes.
- D. *Bias-Motivated Crimes Reporting* – It amends the law that requires law enforcement agencies to collect and report information concerning bias-motivated crimes.
- E. *Civil Action* – It allows an individual who suffers a personal injury or property damage to bring a civil action to recover damages, including punitive damages, if the person who committed the act that caused the injury or property damage selected the individual because of the individual's actual or perceived color, creed, disability, national origin, race, religion, sexual orientation, gender, or gender identity.

Effective Date: July 1, 2015.

Explanation of State Expenditures: Summary: The bill could increase the population incarcerated in Department of Correction (DOC) facilities by adding more offenders who would have been in jail but now would serve time in prison or who would have had a shorter term in prison rather than an enhanced penalty. The actual number of future bias-motivated offenders is indeterminate and will depend on individual cases.

The Indiana Law Enforcement Academy (ILEA) may incur one-time, minimally increased costs to develop training programs. The additional cost would depend on the requirements for bias-motivated crime training established by the Law Enforcement Training Board.

State and local law enforcement agencies may incur additional costs to report bias-motivated crimes through the Uniform Crime Report system of the Federal Bureau of Investigation. Any impact is expected to be minimal since law enforcement agencies must collect information on bias crimes and report to the Indiana central repository for criminal history information under current Indiana statute.

Additional Information:

Change in Definition from Bias Crimes to Bias-Motivated Crimes – Under current law, bias crimes include offenses that persons either knowingly or intentionally commit. Persons “intentionally” commit crimes when it is their conscious objective to do so. Persons “knowingly” commit crimes when they are aware of a high probability that they are doing so. (IC 35-41-2-2). This bill removes the “knowingly” element, possibly reducing the number of persons who might be convicted of a bias motivated crime. But the bill adds two new classes that could increase the number of bias motivated crimes: crimes against persons for either gender or gender identity.

Penalty Enhancement – The bill makes the following penalty enhancements for bias-motivated offenders and shows the ranges of the terms of incarceration in a state prison for the felony discussed in the bill.

| Current Felony/ Misdemeanor | Proposed Enhancement | Crimes Affected | Current Maximum Penalty | Proposed Maximum Enhancement |
|--|-----------------------------|--|--------------------------------|-------------------------------------|
| Class B misdemeanor | Class A misdemeanor | Battery; Criminal mischief; Harassment | 180 days max in jail | 360 days max in jail |
| Class A misdemeanor | Level 6 felony | Criminal trespass; Theft; Criminal conversion; Intimidation | 360 days max in jail | 6 to 30 months in prison |
| Level 6 felony | Level 5 felony | Strangulation; Kidnapping; Criminal confinement; Residential entry; Stalking | 6 to 30 months in prison | 1 to 6 years in prison |
| Level 5 felony | Level 4 felony | Robbery; Burglary | 1 to 6 years in prison | 2 to 12 years in prison |
| Level 4 felony | Level 3 felony | Arson | 2 to 12 years in prison | 3 to 16 years in prison |
| Level 3 felony | Level 2 felony | Aggravated Battery | 3 to 16 years in prison | 10 to 30 years in prison |

The average expenditure to house an adult offender was \$19,497 in FY 2014. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,210 annually, or \$8.77 daily, per prisoner.

Reported Crimes by Motivational Category – The following table is reported by the Indiana State Police for 2012 and 2013 and summarizes these crimes by motivational category.

| Bias Crimes Report by Motivational Category | | | | | | | |
|---|------------------------------|------|----------|--------------------|-----------|------------|--------|
| | Number of Agencies Reporting | Race | Religion | Sexual Orientation | Ethnicity | Disability | Totals |
| 2012 | 4 | 28 | 2 | 15 | 5 | 2 | 52 |
| 2013 | 9 | 29 | 0 | 7 | 8 | 0 | 44 |

Training – The Law Enforcement Training Board is required by this bill to include identifying, responding to, and reporting bias-motivated crimes in the minimum basic training program, the mandatory in-service training program, the town marshal basic training program, the police chief executive training program, and any other training program for mandatory training. Depending on the requirements adopted by the Board, the Indiana Law Enforcement Academy could have one-time, minimally increased costs to develop training programs. Also, if the training program lengthens the basic course, the cost of providing training could increase.

The Indiana Law Enforcement Academy provides a 600-hour, 15-week minimum basic training program for law enforcement officers. The Academy does not charge for the program, but the law enforcement agency compensates the trainee during training. Also, the Academy provides the town marshal training program and the chief executive training program. They develop training programs for the mandatory in-service training, but law enforcement agencies could also engage other organizations to provide these programs, as well.

As an example, recently enacted human trafficking training provisions required the Indiana Training Academy to restructure the minimum basic training program and use outside expertise. The human trafficking training was adapted for local-level officers from a federal government program, and the minimum basic training program was restructured to eliminate cardiopulmonary resuscitation automated external defibrillator (CPR AED) training so that the program did not exceed the 600-hour time frame. (Trainees are still required to receive the CPR AED training outside of the minimum basic training program.)

Explanation of State Revenues: Revenue for the Common School Fund could increase if offenders receive an enhanced penalty. If additional civil actions occur with the authority provided under the bill to bring actions in certain circumstances, the state General Fund could receive additional money from court fees.

Additional Information:

Criminal Penalties – The maximum fine for a Class B misdemeanor is \$1,000, while the maximum fine for a Class A misdemeanor is \$5,000 and the fine for all felonies is \$10,000. Fine revenue is deposited in the Common School Fund.

Civil Actions – A civil costs fee of \$100 is assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee (\$5) are deposited into the State User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: Costs to local governments could increase because the maximum term of imprisonment for a Class B misdemeanor is up to 180 days, while the maximum term for a Class A misdemeanor is up to one year. However, If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

Explanation of Local Revenues: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal.
- Service fee (\$10) collected from the filing party for each defendant beyond the first cited in the lawsuit.

State Agencies Affected: Department of Correction, ILEA, Law enforcement agencies.

Local Agencies Affected: Trial courts; local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; 2012 and 2013 Indiana State Police Bias Crime Reports.

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